

ORIGINAL

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name SEASTRUNK NATHAN  
(Last) (First) (Initial)

Prisoner Number V-81987

Institutional Address SOLANO STATE PRISON, 6-218  
P.O. BOX 4000, VACAVILLE, CA. 95696

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NATHAN SEASTRUNK  
(Enter the full name of plaintiff in this action.)

vs.

D.K. SISTO

WARDEN.

(Enter the full name of respondent(s) or jailor in this action)

CV 08 3444

Case No. \_\_\_\_\_  
(To be provided by the clerk of court)

PETITION FOR A WRIT  
OF HABEAS CORPUS

E-filing

WHA  
(PR)

Read Comments Carefully Before Filing In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or  
3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which  
4 you are imprisoned or by whom you were convicted and sentenced. These are not proper  
5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief  
7 but may be subject to such custody in the future (e.g., detainers), you must name the person in whose  
8 custody you are now and the Attorney General of the state in which the judgment you seek to attack  
9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda  
13 County Superior Court, Oakland):

14 SAN MATEO SUPERIOR COURT SAN MATEO

15 Court

Location

16 (b) Case number, if known SC 055718 B

17 (c) Date and terms of sentence FEBRUARY 10, 2005, 13yrs.

18 (d) Are you now in custody serving this term? (Custody means being in jail, on  
19 parole or probation, etc.) Yes X No       

20 Where?

21 Name of Institution: SOLANO STATE PRISON

22 Address: P.O. BOX 4000, VACAVILLE, CA. 95696

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for  
24 more than one crime, list each crime separately using Penal Code numbers if known. If you are  
25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Pen. Code 212.5 & Pen. Code 460, subd. (a), Pen. Code

27 12022.53 subd. (b), Pen. Code 12022.5 subd. (a).

3. Did you have any of the following?

Arrestment: Yes X No       

Preliminary Hearing: Yes X No       

Motion to Suppress: Yes X No       

4. How did you plead?

Guilty \_\_\_\_\_ Not Guilty X Nolo Contendere \_\_\_\_\_

Any other plea (specify) \_\_\_\_\_

5. If you went to trial, what kind of trial did you have?

Jury X Judge alone \_\_\_\_\_ Judge alone on a transcript \_\_\_\_\_

6. Did you testify at your trial? Yes X No       

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No       

(b) Preliminary hearing Yes X No       

(c) Time of plea Yes X No       

(d) Trial Yes X No       

(e) Sentencing Yes x No     

(f) Appeal Yes x No       

(g) Other post-conviction proceeding Yes \_\_\_\_\_ No X

8. Did you appeal your conviction? Yes X No       

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes X No       

Year: 2006 Result: DENIED

Supreme Court of California Yes X No       

Year: 2007 Result: DENIED

Any other court Yes \_\_\_\_\_ No X

Year: \_\_\_\_\_ Result: \_\_\_\_\_

(b) If you appealed, were the grounds the same as those that you are raising in this

1 petition? Yes \_\_\_\_\_ No X

2 (c) Was there an opinion? Yes \_\_\_\_\_ No X

3 (d) Did you seek permission to file a late appeal under Rule 31(a)?  
 4 Yes \_\_\_\_\_ No X

5 If you did, give the name of the court and the result:

6 \_\_\_\_\_  
 7 \_\_\_\_\_

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to  
 9 this conviction in any court, state or federal? Yes \_\_\_\_\_ No X

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that  
 11 challenged the same conviction you are challenging now and if that petition was denied or dismissed  
 12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit  
 13 for an order authorizing the district court to consider this petition. You may not file a second or  
 14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28  
 15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following  
 17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: \_\_\_\_\_

19 Type of Proceeding: \_\_\_\_\_

20 Grounds raised (Be brief but specific):

21 a. \_\_\_\_\_

22 b. \_\_\_\_\_

23 c. \_\_\_\_\_

24 d. \_\_\_\_\_

25 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

26 II. Name of Court: \_\_\_\_\_

27 Type of Proceeding: \_\_\_\_\_

28 Grounds raised (Be brief but specific):

1 a. \_\_\_\_\_

2 b. \_\_\_\_\_

3 c. \_\_\_\_\_

4 d. \_\_\_\_\_

5 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

6 III. Name of Court: \_\_\_\_\_

7 Type of Proceeding: \_\_\_\_\_

8 Grounds raised (Be brief but specific):

9 a. \_\_\_\_\_

10 b. \_\_\_\_\_

11 c. \_\_\_\_\_

12 d. \_\_\_\_\_

13 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

14 IV. Name of Court: \_\_\_\_\_

15 Type of Proceeding: \_\_\_\_\_

16 Grounds raised (Be brief but specific):

17 a. \_\_\_\_\_

18 b. \_\_\_\_\_

19 c. \_\_\_\_\_

20 d. \_\_\_\_\_

21 Result: \_\_\_\_\_ Date of Result: \_\_\_\_\_

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes \_\_\_\_\_ No X

24 Name and location of court: \_\_\_\_\_

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to

27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: SEE ATTACHED

6  
7 Supporting Facts: SEE ATTACHED

8  
9  
10  
11 Claim Two: SEE ATTACHED

12  
13 Supporting Facts: SEE ATTACHED

14  
15  
16  
17 Claim Three: SEE ATTACHED

18  
19 Supporting Facts: SEE ATTACHED

20  
21  
22  
23 If any of these grounds was not previously presented to any other court, state briefly which  
24 grounds were not presented and why:

25 N/A



1 **CLAIM 1** THE COURT BELOW ERRED AND VIOLATED APPELLANT'S  
2 FEDERAL CONSTITUTIONAL FOURTH AMENDMENT RIGHTS  
3 BY DENTING APPELLANT'S MOTION TO SUPPRESS SEIZED  
EVIDENCE AND THE FRUITS OF THE UNLAWFUL DETENTION  
OF APPELLANT

4 Appellant and codefendant Brooks filed a motion to suppress all  
5 of the evidence seized, and the fruits of all evidence seized, in  
6 the unlawful stop, detention and search of the van in which appel-  
7 lant, Brooks, Melvin, and Michael were stopped. (1CT289.)

8 The 911 call from Angela and Rebecca was received at 8:34 p.m.  
9 (SRT11.) In that call, Rebecca first stated that the suspects  
10 were "in a SUV with the tire on the back." (1ACT86.) She then im-  
11 mediately stated that they were in a "big van" and a "gray van."  
12 (1ACT87.)

13 She responded in the affirmative to a question whether it was a  
14 gray van. The dispatcher, who was receiving information from  
15 officers including Ponzini, asked Angela if the van had a roof  
16 rack, and Angela responded that she did not know. (SRT89.) She  
17 said the van was "old," "big," and was "like one of those old vans  
18 like a SUV kind of like" and that it "had a big wheel on the back".  
19 (1ACT89,90.)

20 Officer Ponzini received a dispatch regarding the robbery very  
21 soon after the 911 call was received, at around 8:34 p.m. (SRT29.)

22 About two minutes later Ponzini saw a "gray-blue" van, that he  
23 thought was gray when he first saw it, which was an older model  
24 van traveling westbound on Sneath Lane, around one-half mile to  
25 seven-tenths of a mile from 2110 Fleetwood. (SRT30-31, 45, 59.)

26 Ponzini testified in response to defense counsel's "It's a  
27 blue colored van; it's not gray?": "Right. When I got up real  
28 close to the van, I could tell there was blue in it." (SRT59.)

1 There was foil covering the back windows of the van. Ponzini  
2 saw some silhouettes of people moving in a normal manner through  
3 the foil. (SRT33-34.)

4 Ponzini requested the dispatcher find out if that matched the  
5 description, and the dispatcher responded that the caller could not  
6 really say anything more than that it was gray in color and there  
7 was "a spare tire was on the back of the van." (3ACT3.) Ponzini  
8 reported there was no tire on the back of the van and that there  
9 was a roof rack. (3ACT3.)

10 In ruling on the motion, the court agreed with defense counsel  
11 for Mr. Brooks as to the color of the van that it was blue.

12 Defense counsel stated: "The officers did indicate, upon closer  
13 inspection, the van appeared to be blue," and the court replied:  
14 "Correct. He did." (SRT84.) However, the court summarily con-  
15 cluded that the stop of the van, the search and the arrests were  
16 "supported" and denied the motion to suppress. (SRT84.)

17 Finally, due to the tin foil on the windows (which Angela did  
18 not report) Ponzini had no idea if the persons in the van matched  
19 the general description of black males given by Angela.

20 **CLAIM 2 THE TRIAL COURT VIOLATED APPELLANT'S FOURTEENTH**  
21 **AMENDMENT RIGHTS TO DUE PROCESS AND A FAIR TRIAL**  
22 **BY DENYING THE DEFENSE REQUEST TO EXCLUDE MICHAEL'S**  
**OUT OF COURT STATEMENTS ON THE GROUNDS THAT THEY**  
**WERE INVOLUNTARY AND UNRELIABLE**

23 Michael G.'s original statement to juvenile probation officer  
24 Regina Espinoza was coerced, involuntary, and unreliable and be-  
25 cause the coercion tainted Michael G.'s subsequent statement and  
26 testimony. Michael G.'s statement to Espinoza was motivated by  
27 the implied promise of leniency and threat of harsher treatment  
28 for failing to speak inherent in Espinoza's initial statements



1 to Michael G. regarding the purposes of the interview. "Upon  
2 front" and before taking the statement, Espinoza explained to  
3 Michael that the reason why she was preparing the detention report  
4 was to determine "whether or not to let him go," and that the de-  
5 cision would be made "whether or not he will be released," that  
6 she had to write a report, and that it would be submitted to the  
7 judge. (1RT46, 48, 51.) Michael's age, vulnerability and lack of  
8 sophistication demonstrate that he would not have felt free to  
9 contradict his statement to Espinoza. Michael was a youth, a  
10 ward of the court, alone, placed in a police car with two very  
11 potent symbols of authority. (4RT525-35.) Moreover both Michael's  
12 statement to Espinoza and his statement to the prosecutor and  
13 Guldner were given under circumstances that make the statements  
14 inherently unreliable. Michael was a suspect and he had a motive  
15 to pass the blame. Here, there was no dispute that Regina Espinoza  
16 made an implied promise of leniency and threat of harsher punish-  
17 ment: she testified to it openly and acknowledged doing it. (1RT  
18 46, 48, 51.)

19 **CLAIM 3** THE TRIAL COURT ERRED IN DETERMINING THAT MICHAEL  
20 COULD NOT INVOKE HIS FIFTH AMENDMENT RIGHT AGAINST  
21 COMPELLED SELF INCRIMINATION; THE ERROR RESULTED IN  
22 A VIOLATION OF APPELLANT'S SIXTH AMENDMENT RIGHTS TO  
CROSS EXAMINATION AND FOURTEENTH AMENDMENT RIGHTS  
TO DUE PROCESS AND A FAIR TRIAL

23 The trial court's failure to allow Michael G. to invoke his  
24 privilege against self incrimination resulted in a violation of  
25 appellant's Sixth Amendment rights to confrontation and cross  
26 examination.

27 Prior to trial, defense counsel for Mr. Brooks filed a motion  
28 asserting that if Michael invoked the Fifth Amendment privilege at

1 trial or stonewalled in his testimony, his pre-trial statements  
2 would be inadmissible because they were testimonial and appellant  
3 Brooks would be denied his rights to confrontation and cross  
4 examination. (2ACT8-12.) Defense counsel for appellant joined in  
5 this motion (2CT459; 1RT309; 4RT417-18.)

6 Defense counsel also specifically argued, after Michael's trial  
7 testimony, that because Michael had stonewalled appellant was  
8 denied his confrontation and cross examination rights. (4RT417-18.)

9 Here, the trial court erred by failing to allow Michael to in-  
10 voke his Fifth Amendment right to be free from self incrimination  
11 because Michael had reasonable cause to apprehend danger of pro-  
12 secution for offenses other than the charges of committing a rob-  
13 bery against Angela an Aaron, which were dropped by the prosecut-  
14 ion. (1RT17-58, 151-60.)

15 Even if this apprehension of danger were not enough, Michael  
16 had a reasonable apprehension of danger that, if his testimony  
17 differed from his pre-trial statement to the juvenile probation  
18 officer or to the prosecutor and San Bruno police officer Guldner,  
19 he could be prosecuted for lying to a peace officer.

20 The court's error resulted in a violation of appellant's Sixth  
21 Amendment rights to confrontation and cross examination, because,  
22 in light of the reasonableness of Michael's apprehension of danger,  
23 Michael's stonewalling during his testimony was materially indis-  
24 tinguishable from an attempt to invoke this Fifth Amendment right  
25 against self incrimination before the jury.

26 However, Michael was a recalcitrant witness for the prosecution  
27 at trial, who answered "I don't remember" or just "no" to every  
28 substantive question asked of him about the robberies and his  
probation officer, the prosecutor and Officer Guldner. (4RT391-412.)

1 CLAIM 4 THE TRIAL COURT ERRED AND VIOLATED APPELLANT'S  
 2 FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS AND  
 3 A FAIR TRIAL BY ALLOWING THE PROSECUTOR TO IN-  
 4 TRODUCE THE TESTIMONY OF DEPUTY DISTRICT ATTORNEY  
 5 THOMAS THAT THE JUVENILE PETITION CHARGED AGAINST  
 6 MICHAEL WAS DISMISSED FOR INSUFFICIENT EVIDENCE,  
 7 PROSECUTORIAL TESTIMONY CONSTITUTED IMPROPER  
 8 VOUCHING FOR THE RELIABILITY AND VERACITY OF  
 9 MICHAEL

10 The trial court erred and violated appellant's rights to due  
 11 process and a fair trial by admitting the testimony of Deputy Dis-  
 12 trict Attorney Thomas regarding his opinion that there had been  
 13 insufficient evidence to charge Michael G. for the robbery of Aaron  
 14 and Angela because Thomas's testimony constituted improper vouching  
 15 by a member of the prosecutor's office, was irrelevant, not impeach-  
 16 ing of any testimony, and was an improper expert opinion on a ques-  
 17 tion of fact that was entirely within the jury's province. (1RT16-  
 18 31; 4RT390-421, 542-545; 5RT587, 693, 731-737.)

19 As Eddie Thomas and Michael G. testified repeatedly at trial and  
 20 as the attorney general acknowledged on appeal, Michael G. had  
 21 pleaded guilty to San Francisco juvenile robbery charges in ex-  
 22 change for a dismissal of the charges in the instant case. (1RT31;  
 23 4RT407; 5RT731; RB, p.41.) The plea bargain did not include a  
 24 promise that Michael G. would testify at appellant's trial, and  
 25 appellant has never contended otherwise, either at trial or on  
 26 appeal. (1RT31; 4RT407; 5RT 731.)

27 The fact that this plea bargain existed was established by re-  
 28 peated testimony by Eddie Thomas under oath, that Michael G. en-  
 29 tered into a plea bargain in which the charges in the instant case  
 30 were dismissed in exchange for a guilty plea in the San Francisco  
 31 robbery case: Q You waited until both cases were adjudicated to-  
 32 gether on a pretrial conference of some sort, and  
 33 then you made it part of the plea, that if he

1           were if he were to plaed guilty to the San  
2           Francisco case, you would dismiss the rob-  
          bery case in this county, right?

3           A Yes. (1RT31.)

4           Q Did from review of the files, did Michael  
5           and his attorney accept the offer at the  
          pretrial conference, that is to admit the  
          one robbery and have the other robbery dismissed?

6           A Yes,sir. (5RT731.)

7           On cross examination, Michael G. responded "yes" to the this  
8           question: "And as part of the plea bargain, the District Attorney  
9           office gave you a break and dismissed the case against you invol-  
10          ving these sets of facts."

11       **CLAIM 5**    THE PROSECUTOR COMMITTED MISCONDUCT AND VIOLATED  
12                   APPELLANT'S FEDERAL CONSTITUTIONAL RIGHTS TO DUE  
13                   PROCESS AND A FAIR TRIAL UNDER THE FOURTEENTH  
14                   AMENDMENT AND SIXTH AMENDMENT RIGHTS TO CONFRONT-  
15                   ATION AND CROSS EXAMINATION BY MISLEADING THE JURY  
16                   REGARDING THE FACTS, ARGUING FACTS OUTSIDE OF THE  
17                   EVIDENCE, AND VOUCHING FOR THE RELIABILITY OF  
18                   WITNESSES'S TESTIMONY

19           Appellant claimed on appeal that the prosecutor violated his  
20           Sixth and Fourteenth Amendment rights by misleading the jury re-  
21           garding the facts, arguing facts outside of the evidence, and  
22           vouching for the reliability of deputy district attorney Thomas's  
23           testimony and all testimony regarding Michael G.'s out of court  
24           statements.

25           The prosecutor proceeded on the sole theroy that appellant and  
26           Brooks were the direct perpetrators of the robberies of Angela  
27           and Aaron and asked the jurors to find appellant not guilty if he  
28           was just sitting in the van. (7RT963-64.) Aiding and abetting  
          instructions were given, apparently to assist the jury in de-  
          termining, based on the evidence at trial, whether Michael was  
          an accomplice and whether his statements therefore must have

1 been corroborated. (2CT551-558; 7RT916-19.)

2 The prosecutor argued in closing:

3 Okay, now Michael's not given a deal for his  
4 testimony. That's why we had Mr. Thomas come in.  
5 Remember what was going on? He had two robbery  
6 charges. This one was filed against him, plus  
7 the one involving Mr. Manto from September of 03.  
8 And it turns out that Michael G. had not come to  
9 court on the Manto case. And has actually a bench  
10 warrent out for him when this robbery occurred.

11 So he's actually facing two charges in juvenile  
12 court. And Mr. Thomas said he reviewed it and  
13 he felt this one was nearly impossible to prove  
14 or whatever he said, insufficient evidence to  
15 prove this against Michael G. And that this case  
16 was dismissed against him.

17 It was not dismissed as part of a deal for his  
18 testimony. It was just dismissed. He had to  
19 admit the other robbery. And in that other there  
20 was no deal for his testimony in this case.  
21 (7RT943-44.)

22 The above cited argument by the prosecutor, especially con-  
23 sidered with the argument that immediately followed and later  
24 arguments by the prosecutor, constituted misconduct because it  
25 misled the jury to believe that there either was not or might not  
26 have been a plea bargain "deal" that resulted in the dismissal  
27 of the San Bruno robbery charge against Michael.

28 The argument that immediately followed was:

29 Now, why was the case dismissed against Michael G.?  
30 I think when you look at the jury instruction,  
31 I would submit that there is a line, there is in-  
32 structions that talk about what principals are,  
33 and what aider and abettors are. I'll get to that  
34 in a minute. But it says mere presence at the scene  
35 of the crime is not enough. You have to do some-  
36 thing to aid and encourage the crime before you  
37 are liable. So if Michael was simply sitting in  
38 the van and not doing anything to encourage or aid  
39 the robberies, then he is a not guilty, even if  
40 he knew.  
41 (7RT943-44.)

42 At that point, defense counsel objected that the prosecutor's



1 argument referred to facts not in evidence, and the trial court  
2 sustained the objection, saying to the prosecutor "just limit  
3 it to what we have, if you would." (4RT944.) The prosecutor  
4 requested that the jurors rely on their memories if he misstated  
5 the evidence, but then the prosecutor immediately repeated the  
6 same improper argument, augmenting it with yet further improper  
7 vouching: "But I would submit it would have been very hard to  
8 prove Michael aided, abetted, assisted the robbers." (7RT944.)

9 Defense counsel again objected that the prosecutor was re-  
10 ferencing facts outside the evidence, and the trial court sus-  
11 tained the objection and struck the argument, saying "strike "  
12 that out.

13  
14 **CLAIM 6** APPELLANT'S FEDERAL CONSTITUTIONAL RIGHTS TO  
15 DUE PROCESS AND A FAIR TRIAL UNDER THE FOUR-  
16 TEENTH AMENDMENT AND HIS SIXTH AMENDMENT RIGHT  
17 TO JURY TRIAL WERE VIOLATED BECAUSE THE BEYOND  
18 A REASONABLE DOUBT BURDEN OF PROOF WAS DILUTED  
19 AND REDUCED AT TRIAL, AND DEFENSE COUNSEL PRO-  
20 VIDED INEFFECTIVE ASSISTANCE OF COUNSEL BY  
21 FAILING TO OBJECT TO THE PROSECUTOR'S IN-  
22 CORRECT ARGUMENTS REGARDING THE BURDEN OF  
23 PROOF

24  
25 **A. The Prosecutorial Misconduct**

26 The prosecutor committed misconduct and violated appellant's  
27 to due process and fair trial by diluting the burden of proof  
28 during closing argument.

The prosecutor argued in closing:

Remember what I argued to you or mentioned in voir dire, if  
reasonable doubt is anything, it's not, I have to be sure he's  
guilty. If a juror was to come back and say, I just wasn't sure  
he was guilty, my response perhaps would be, but you don't have

1 to be sure he's guilty, you have to be convinced beyond a reason-  
2 able doubt he's guilty. Okay. It's not the same thing. (7RT956.)

3 The prosecutor also argued in closing:

4 Okay. Reasonsable doubt. Can't forget reasonable doubt.

5 What is reasonable doubt? The judge read you the definition.

6 I'm not going to read it all, but it's clear what it is not.

7 It is not a possible doubt. Because everything relating to hu-  
8 man affairs is open to some possible or imaginary doubts.

9 So you - you got to look - you have a reasonable doubt.

10 Here's a way I suggest you go at it. You don't have to do it  
11 this way, but if it helps, I suggest a three step process to decide  
12 if you've got a reasonable doubt as to the evidence.

13 One, if a reasonable doubt is anything, it's a doubt based on  
14 don't want to find him guilty, but you can't say why. That I  
15 would submit is not a reasonable doubt.

16 Two, if you if you've given your doubt a reason, make sure the  
17 reason is one the law allows. You can't be because you don't want  
18 to find him guilty because you are worried about his kids or wor-  
19 ried about his punishment. The law doesn't allow that. Okay.

20 So if you have a reason, if you make sure it's the law allows,  
21 then hopefully your doubt is based on the evidence. And if it's  
22 based on a conflict in the evidence, you decide what happened.

23 If you can decide what really happened, then see if you have  
24 a reasonable doubt. If you still do, then, fine, acquit Mr.  
25 Seastrunk. (7RT963.)

26 B. Ineffective Assistance of Counsel

27 Defense counsel could not have had a plausible, tactical  
28 reason for failing to object to the challenged prosecutorial

arguments about the burden of proof, and he provided ineffective assistance of counsel in failing to object.

**CLAIM 7 THE TRIAL COURT PREJUDICIALLY ERRED IN ADMITTING EXHIBITS 27 AND 28, THE "BOOKING" AND "PROPERTY" SHEETS FOR MICHAEL FROM JUVENILE HALL, OVER DEFENSE COUSEL'S HEARSAY OBJECTIONS; THIS ERROR VIOLATED APPELLANT'S FEDERAL CONSTITUTIONAL RIGHTS TO CONFRONTATION AND CROSS EXAMINATION UNDER THE SIXTH AMENDMENT**

The trial court erred and violated appellant's confrontation rights by admitting Michael G.'s booking and property inventory sheets from Juvenile Hall (exhs. 27 and 28), and Barry Thompson's testimony in which he read from the exhibits, which were prepared by someone else.

However, Angela and Aaron's testimony that they could not rule out that Michael G. was the "second" robber who had been in the bedroom with Aaron; Angela's testimony and statements that that robber was "short" and that Michael was about her height, which was five feet four inches tall; the fact that the robbery occurred over 1 year prior to Michael's testimony at trial; and the fact that Michael was only 16 at the time he testified at trial. (1ACT89; 4RT364-67, 370, 392-394, 476-78; 5RT685-87.)

Sergeant Mahon gave only an eyeball estimate of what Michael G. heighe was a year prior to his testimony, the booking sheet was of particular importance in the prosecution's attempt to prove that Michael G. had not been shorter at the time of the robbery than he was at trial. (4RT442, 589-90.)

Since identity was the crucial issue at trial, and evidence regarding the height and clothing of the suspects was in turn crucial to the issue of identity, the erroneous admission of the booking and property sheets was highly damaging to appellant's

1 defense.

2 **CLAIM 8** REVERSAL OF APPELLANT'S CONVICTIONS IS REQUIRED  
3 BECAUSE THE CUMULATIVE IMPACT OF THE MULTIPLE  
4 STATE LAW AND FEDERAL CONSTITUTIONAL ERRORS  
5 RESULTED IN A MISCARRIAGE OF JUSTICE AND DE-  
6 PRIVED APPELLANT OF A FUNDAMENTALLY FAIR TRIAL  
7 IN VIOLATION OF HIS FOURTEENTH AMENDMENT RIGHT  
8 TO DUE PROCESS

9 The cumulative prejudicial impact of the errors identified in  
10 claims 1 through 7 resulted in a miscarriage of justice. The  
11 errors also violated appellant's federal constitutional right to a  
12 fair trial.

13 **CLAIM 9** THE TRIAL COURT ERRED UNDER STATE LAW AND VIOLATED  
14 APPELLANT'S FIFTH, SIXTH AND FOURTEENTH AMENDMENT  
15 RIGHTS TO A FAIR AND IMPARTIAL JURY, TO DUE PROCESS  
16 AND TO A FAIR TRIAL BY REFUSING TO EXCUSE A JUROR  
17 FOR CAUSE AND REFUSING DEFENSE COUNSEL'S REQUEST FOR  
18 ADDITIONAL PEREMPTORY CHALLENGES, WHICH FORCED  
19 APPELLANT TO PROCEED TO TRIAL WITH AN UNACCEPTABLE  
20 JURY

21 The trial court erred under state law and violated appellant's  
22 state and federal constitutional rights to a fair and impartial  
23 jury by denying appellant's challenge for cause and thereby depriv-  
24 ing him of a peremptory challenge he would have used to excuse a  
25 juror who eventually sat on his trial.

26 During jury selection, the trial court denied 8 defense chal-  
27 lenges for cause. (2ART288-89; 3RT214-222, 230-236.) After appel-  
28 lant had used 9 out of 10 of his allotted peremptory challenges,  
defense counsel asked to approach the bench. Defense counsel had  
been able to excuse 4 of the jurors he had challenged for cause;  
other unsuccessfully challenged jurors were in the draw. (1ART155-  
157; 2ART288; 3RT230-35.) However, trial juror 7, whom defense  
counsel had also unsuccessfully challenged, was on the jury panel.  
(1ART98, 110, 136-37; 2ART210-02; 3RT219-20.)



1 Defense counsel specified that he wished to exercise more per-  
 2 emptory challenges and that he did not believe he could get a fair  
 3 and impartial jury within the meaning of the Sixth Amendment with  
 4 the jury as constituted or if allowed only one additional defense  
 5 peremptory challenge. (3RT235.) The court denied defense counsel's  
 6 request for 10 additional challenges or, in the alternative, a new  
 7 jury panel. (3RT235-236.)

8 Among the jurors whom the defense challenged for cause and whom  
 9 the judge did not excuse was prospective juror Church. On the  
 10 first day of jury selection, the trial court asked the standard voir  
 11 dire question whether the jurors or anyone close to them had ever  
 12 been convicted of a criminal offense. (1ART85-86.) No one respond-  
 13 ed. The next morning, as jury selection began, prospective juror  
 14 Church admitted he had concealed his own DUI conviction on the  
 15 previous day:

16 THE COURT: What seems to be the issue, Mr. Church?  
 17 MR. CHURCH: Your Honor, I must apologize. Yes-  
 18 terday I failed to disclose certain information,  
 19 primarily out of embarrassment. But also due to  
 20 the fact I didn't believe I didn't believe the cir-  
 21 cumstances would inhibit my ability to be a fair and  
 22 impartial juror. And now I must own up to that, sir.  
 23 THE COURT: Okay. Go ahead.  
 24 MR. CHURCH: That I, in 1986, I was convicted.  
 25 THE COURT: Okay. Go ahead.  
 26 MR. CHURCH: Of a DUI. And over the course of about  
 27 20 years, I've had my car burglarized twice. And  
 28 I was the victim of a strong armed robbery once  
 about 18 years ago.  
 THE COURT: And you didn't remember any of this?  
 MR. CHURCH: Sir, I didn't remember any of the  
 criminal activity against me. I - I - I apologize,  
 sir. And that's why I'm owning up to it.  
 I realize that was wrong.  
 (2ART203-04.)

26 He also described having been robbed by two unarmed African  
 27 American men in 1989. (2ART206-08.)

28 Defense counsel also cited Church's failure to initially dis-



1 cuss the incident in which he was a robbery victim. (RT230-31.)  
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1 List, by name and citation only, any cases that you think are close factually to yours so that they  
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning  
3 of these cases:

4 Terry v. Ohio. 392 U.S. 1, 21; North Carolina v. Butler, 441

5 U.S. 369; Douglas v. Alabama 380 U.S. 415; U.S. v. Roberts

6 618 F.2d 530; Darden v. Wainwright 477 U.S. 168.

7 Do you have an attorney for this petition? Yes        No x

8 If you do, give the name and address of your attorney:

9 \_\_\_\_\_  
10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in  
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12  
13 Executed on

7/13/08

14 Date



Signature of Petitioner

15  
16  
17  
18  
19  
20 (Rev. 6/02)

NATHAN SEASIRUNK  
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JUL 15 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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